



## MINUTES

### **The Governor's Citizen's Traffic Stop Advisory Board**

**April 18, 2008**

#### **Governor's Southern Arizona Office**

**North Building (judges hearing room)**

**400 W. Congress, Room 222 Tucson, AZ 85701**

**Members Present:** Elizabeth Archuleta, Jean-Jacques "J" Cabou, Mel Hannah, E. Lorenzo Jones, Thomas Mildebrandt

**Teleconference Members:** Luis Fernandez, Zoe Kristine Hammer Tomizuka

**Absent:** Sal J. Rivera, Orlenda Roberts

**Staff:** Dora Vasquez, Director, Governor's Office of Boards and Commissions, Lauretta Ayres, Governor's Office of Boards and Commissions

**Guest:** Chief Mikel Longman, Department of Public Safety, Liana D. Perez and Bob Barton, City of Tucson, Dan Pochoda, Michael Haggerty, local ACLU and King Downing, American Civil Liberties Union Foundation, New York, Anni Lori Foster, Arizona Attorney General Office, Phoenix, Michael C. Elsner, Ph.D., Institute for Social Justice, Tucson

**1. Introduction of Advisory Board Members/Call to Public:** Chairman Mel Hannah called the meeting to order at 1:00 p.m. Chairman Hannah asked Board members to introduce themselves.

Call to Public: The public introduced themselves.

**2. Approval of Minutes, February 22, 2008:** Chairman Hannah asked if there was any discussion regarding the minutes. There were no questions from the Board.

**ACTION:** Board member Archuleta motioned to approve the minutes; Board member Jones seconded; motion passed unanimously.

**Approval of Minutes, April 8, 2008:** Chairman Mel Hannah asked if there was any discussion regarding the minutes. Chairman Hannah stated as Chairman he did not want to be assigned to the Best Practices subcommittee. He suggested Sal Rivera be assigned and he would help out with all the committees. The Board agreed. There were no other questions from the Board.

**ACTION:** Board member Archuleta motioned to approve the minutes; Board member "J" Cabou seconded; motion passed unanimously.

**2. A National Perspective on Law Enforcement and Racial Profiling:** King Downing, American Civil Liberties Union Foundation, New York gave a presentation on what other states have done regarding racial profiling. He has looked at over 60 data collection reports that have been released around the country. About 20 to 25 of the reports have been as a result of legislation and another 8 as a result of litigation or an Executive Order by an official. He was associated with the Rhode Island Taskforce, the Massachusetts Racial Profiling Taskforce. He was also part of the Arizona Advisory Committee in 2005, and worked closely with the Florida Miami/Dade Board. The reports need to have explanations included so the statisticians can analysis and review any disparity. For example, in Rhode Island, the police department was saying it was a vacation area and they had a large influx of African-American and Hispanics visitors during the summer and that was why there was a large percentage of African-Americans on the report. The statisticians were able to go back and look and find out that there were not statically sufficiently increases in the number of Black and Latino vacationers in that area. The agenda was tightly controlled by the AG's office and it was very difficult to get items on the table. In Massachusetts also was an area where input data design and analysis reporting were all part of that group's charge. They did something Rhode Island did not do, they also included at the time the report was released hearing around the state where the board members and statisticians explained the report, but they also took stories of people who were making claims of racial profiling in the jurisdiction where the hearings were being heard. It was a very informative meeting where people could ask questions and give stories and really understand the report. The Arkansas report was created by the legislature and there were provisions as to how many board members there would be and who would select them. This legislation did not provide for any data collection and the board's mission was to do additional fact findings to see whether data collection should be made or not. So they held hearings all around the state of Arkansas and gathered stories and recorded them. It was included in the report. The last report I have is the Miami-Dade report that was created through local legislation. It held hearings after the report was released and also created a transcribe of those hearings. This board was held under the tight control of the police agency that was involved and the researcher. There were sufficient disparity in the data. I leave you with a lot of work, please give it your best, it will not be an easy job. Whatever resources you need, please ask for them. Board member Archuleta stated she would like to have a copy of the reports he spoke about today. Mr. Downing said he would send the reports and the link for Northeastern University to Dan Pochoda who would then send them

to Dora Vasquez in the Governor's office. A copy of one of the reports is in the file. Chairman Hannah thanked Mr. Downing for his time to come and present to the Board.

**ACTION:** None

**4. City of Tucson Citizens Police Advisory Review Board/Independent Police Auditor:** Liana Perez, Director, city of Tucson Independent Police Auditors Office gave a presentation on what the city of Tucson has done and continues to do regarding racial profiling. Tucson is the first city in Arizona to address racial profiling. The city of Phoenix has incredible software program for tracking the officers and profiling. Ms. Perez covered the history of the Office of the Independent Police Auditor that was created in 1997. They have two forms of oversight. One is her office, the Office of the Independent Police Auditor (IPA), which is with the city of Tucson. The other is an actual board – the Citizen Police Advisory Review Board (CPARB) and they have 7 regular voting members and 3 ex-officio, nonvoting members. The mayor and each council member appoint 1 voting member. Both are forms of oversight, although they differ in authority. The CPARB refer citizens to file complaints against the city police department to the department's office of professional standards or to the office of the Independent Police Auditor (IPA); and conducts public outreach to educate the community. The Office of the Independent Police Auditor (IPA) was established as an external source to audit citizen complaint investigations conducted by the Tucson Police Department Office of Internal Affairs (OIA). The audit purpose is to determine if an OIA investigation was complete, thorough, objective and fair. The Office of the IPA is a resource for the citizens of Tucson regarding police actions and standards.

The IPA does a lot of outreach with the schools, neighborhood associations, community organizations, anywhere the information is important to the public. She also sits on other boards that review high profile cases such as officer shootings, etc. so the citizens know that someone outside of the department is reviewing the cases.

In 1998 the police chief held a series of public meetings with the community and the topic was racial profiling. The outcome of these meetings were the citizens concerns about if they did complain, would anything be done. Incidences that occurred to them not necessarily from Tucson police but other areas the underlying tone was where do citizens go, how do they know if they file these complaints they will be taken seriously, and there will be an outcome for them. Some filed a complaint and a year later they never heard the outcome of the complaint. Knowing that racial profiling is the hardest type of complaint to prove, the IPA has worked hard to resolve this. Over the last ten years the department has less than 20 complaints of racial profiling. They track the complaints, but the numbers are low. They have a diversity-training program for the officers and all city employees. Ms. Perez recommended resources from other agencies, such as National Associate for Civilian Oversight of Law Enforcement (NACOLE), Police Practices Review from Los Angeles, National Institute of Crime Prevention (NICP). The PowerPoint presentation is attached.

Board member Archuleta thanked Ms. Perez for her presentation and she had some questions. Ms. Archuleta wanted to know if she made any recommendations or impact polices of the police department. Ms. Perez stated she makes

recommendations directly to the police chief regarding training, policy and how they investigate complaints. Board member Archuleta mentioned benchmarks and asked about their policy. Ms. Perez stated NACOLE does have those measures and the IPA has been developing this practice throughout the year. One of the things that can be done is to do a citizen satisfaction survey after they have filed a complaint. We did this about two years ago with our external board. Everyone who filed a complaint that year got a survey. Some came back that they were not satisfied, but that was because the outcome wasn't what they wanted. But they were satisfied that it was thoroughly addressed and someone listened to their complaint. The website for NACOLE is: [www.nacole.org](http://www.nacole.org). Chairman Hannah asked Ms. Perez about the bias committee. It is a committee that is part of the police department. The committee went to the chief and said they need to be proactive with the data collected. Board member Cabou expressed appreciation for the presentation and asked for the volume of cases and the size of your staff. The staff is Bob Barton and herself, but the office of the police auditor and the equal opportunity office so I have a staff of 12 individuals. For the most part Bob Barton does the day-to-day basis the full-time person. Bob Barton stated that the police department receives about 25 to 40 complaints per month, and 5 to 12 will initiate through IPA office. My role is to see that the process is followed by and general orders are taken into account when they are doing the processing. Board member Cabou asked what the role of the Citizens Board in Tucson is. Ms. Perez said the Board represents the public body, which is representing the mayor and council. So they hold monthly meetings, which is the 3<sup>rd</sup> Tuesday of each month. They randomly pick 3 complaints from the list that the police department sends each month that have been completed. It may be the use of force allegations; sometimes it may be attitude or rudeness complaints. The Board does the check and balance. The meetings are public meetings, and citizens can bring concerns to them and they can put them on the agenda for further discussion. If the Board is not familiar with the item they may ask for a presentation from the police department. She and Bob are support staff for this Board at these meetings. There are five classifications – sustained, not sustained, unfounded, other, and exonerated. Board member Archuleta asked how the neighborhood associations and other groups in terms of the process of how is it made at least intimidating as possible. How are you building those relationships? Ms. Perez stated the website can be used 24/7 and is the least intimidating, there is a mail-in form (English/Spanish), and they can call in. The Department has a mediation program that some of the complaints and the citizens have found it very beneficial. The officer and the citizen must agree to the process.

**ACTION:** None

**5. Review of DPS Consent Search Form and Officer Procedures:** Chief Mikel Longman gave a review of consent form and officer procedures. The actual copy of the consent form was given to each Board member. It is a 3-part form, one copy for department of records and is retained there, one copy for the officer, and one for the citizen. The bottom half of the document is in Spanish. The policy states that prior to conducting consent search at a traffic stop an officer shall obtain written consent for the search. The officer shall not have the discretion to decline the use of the written consent form and it gives a few reasons. For example, because the officer thinks it is inconvenient, or he/she does not have it in their possession. The driver/owner of the

vehicle has the right to refuse the request for consent. One of the issues with the Board and with ACLU is some individuals say "yes" you can search my vehicle, but for some unknown reason will not sign the form. The officer is authorized to go forward with the search. Since this has been brought to our attention, I have discussed this with my command staff and we are looking at tightening up the restriction and I will be able to report back to you at another meeting. For example, what we are looking at is if the officer has a mobile video camera or a digital recorder in their possession, which would be the only reason why they could do that and not have a signed form. This is under discussion. Chief Longman would like to have his commander of professional standards unit come and speak to the Board. The standards that the Tucson police department is using, is a standard for the industry and DPS is using it.

Chairman Hannah stated it is important for the ACLU and DPS be involved in the subcommittee process as they work on the details. Board member Cabou stated there is a national trend against searches at a traffic stop. I have trouble with consent forms when the person refused to sign it. When you are pulled over, it is a very nerve-racking situation. You are in a position of very little authority or no authority. What rights you might have, you are not a position to enforce. So there is some element of coercion. I am concerned about the search going forward even though they can't get the consent form signed. Can you explain why the department feels strongly that is an intricate part of stop? Chief Longman said he could not explain why that component was allowed. Chief Longman has discussed this with his command staff; is this the right thing to do and continue to do. Policy is if you have an unsigned consent, you need a witness. Board member Archuleta agreed with member Cabou, if there is no signed form, there should be no search. I have a lot of questions regarding the form and would like to know whom the Board could work with to get it resolved. Chief Longmore is the person and maybe in a subcommittee discussion it could be delved into. Board member Archuleta said the subcommittee could take the questions she has and make recommendations. In the subcommittee or the next meeting, member Cabou would like a definite discussion on consent searches and hearing from you or anyone else on your staff. I would like to discuss this topic to an end that everyone will be happy.

Chairman Hannah introduced Daniel Pochoda, ACLU. Mr. Pochoda has been looking closely at the events that lead to the letter dated April 15<sup>th</sup> 2008, of recommendations that can be implemented at this point in time. They were not drawn from the best practices document, but from the review of the information collected from DPS and the data collection of practical recommendations that will increase DPS operations. Under the first category, there is consensus that video/audio equipment is an important component of accountability and individual responsibility. All four numbers under the first section will implement goals and specifics of agreements in a manner that avoids some of these problems. Mr. Pochoda went on to say that if you have audio/video equipment required, it should be operational and not working for any period of time. He noted that retaining audiotapes was the final point in the section.

Mr. Pochoda continued with section B. Searches. He stated that as demonstrated, there is a serious problem with voluntary consent, and that consent searches do not make sense and are being abused. The ACLU feels strongly that if there is no

justification or reasonable suspicion to search, and then there is no law enforcement need for a search based on consent.

Mr. Pochoda then moved to section C. Public Interaction; in which data demonstrates there are a fairly low number of complaints, only 19 total racial profiling complaints out of 194,000. It is a lower percentage than the other departments. As public knowledge about mechanisms and avenues of making complaints increases, as recognized in Tucson, we see the need for third party involvement. The public confidence in this process is greatly increased when a third body is involved.

Mr. Pochoda discussed the section D. Data collection, by pointing out that it is critically important, all 19 cases have been found that the officer's actions were proper. Our position is that Robin Engel, who is heading the team for DPS, has demonstrated over and over a total unwillingness to ever say that it is likely that those statistical results are due to racial motivations. He continued by saying that it seems to be a real draw back in terms of the state moving ahead with its monitoring of racial profiling. If some sort of third party person could come together with Ms. Robin Engel, DPS and Fred Solop or another mechanism that would really help this state move forward. The ACLU feels that the statistics are pretty clear that of those who are stopped for a lengthy period of time and searched after being stopped, are directly tied to racial profiling. Mr. Pochoda says that the ACLU's recommendations can be implemented in a short period of time.

Chairman Hannah asked how third parties could help with this issue. Mr. Pochoda's response was that it would help increase data collection as well as benchmarking. Ms. Vasquez said that the staff was very grateful for the ACLU's recommendations, and pointed out the mobile video program manual in Section A of the ACLU report, that DPS has created a manual that regulates its officers. She also stated that the ACLU Report might enhance DPS's current manual. Chairman Hannah said that this is exactly what they are trying to do, and trying to bring all the resources together. Board member Archuleta asked how this all is going to happen because she is very concerned about the equipment and making sure it works in the motor vehicles. She thinks it is something that needs to happen very quickly. From a citizen's point of view, it seems very simple that this should be a normal check, just as a bus driver checks the tires and break lights before driving. Asked if this would be going to committee from here. Chairman Hannah replied by saying that the ACLU has done a good job of putting recommendations together and now want to review what DPS has done, and make a subcommittee that formulates recommendations and then comes back to the whole body to discuss and adopt. Chief Longman said that he wanted to protest for the fine men and women of DPS in that there needs to be some kind of discussion on the allegations both by ACLU and Attorney Lee Philips in Flagstaff. Some of these issues are addressed in a particular manual. He continued by saying that there are fiscal and financial issues related to ACLU's recommendations, and would like to engage in some dialogue. He went on to encourage the board to consider both sides of the story. Offered to have Dr. Engel present to the committee and suggested that Dr. Solop has a bias on the other side. Board member Jones had a question about whether DPS is provided policy and training recommendations, as stated on page 194 of the Engel report. Chief Longman answered yes and that it is ongoing, and that DPS is willing to implement her recommendations. Board member

Jones asked what the conclusion is of Dr. Engle's report; he also asked what we are training for if there is no conclusion. Chief Longman offered to schedule her to come in to the next meeting to explain further. He also mentioned that DPS is working to increase data collection and enhancing and expanding the process, which they hope would be acceptable to the ACLU.

Chairman Hannah proposed to have both Solop and Engel attend a meeting where they are asked to give their opinions on this critical issue. Board member Cabou said that it is not very appropriate for us to have this happen. Both individuals are widely known for their work, and if the committee identifies that it is important to have a third party involved, then a recommendation should be that someone not involved with the law suit review the information. He would hate to have two very passionate people evolve into an argument, and has seen it in court and would not like to see it here. Board member Archuleta said that the committee has had a chance to hear a presentation from Solop, and would like to hear a presentation from Dr. Engel. Chairman Hannah said that that is a good idea, but would like to have someone look for another resource.

Board member Fernandez said that to have a neutral person who can mitigate this information from a neutral prospective is probably not likely to occur. Offered to forward the committee academic journals and articles that help to develop an understanding of the data and describes how racial profiling occurs. He also states that it is unquestionable that there is racial disparity and that it is occurring; figuring out how to deal with this disparity is another step. Board member Archuleta said she is not as interested in whether or not racial profiling is occurring, but making sure measures, policies and procedures are implemented to ensure that there isn't racial profiling. Chairman Hannah said that using the words "racial disparity" might imply a difference response, but that the data supports that it exists and may be what the committee is trying to eliminate. Mr. Pochoda said that the Board is only interested in making recommendations, and pointed out that it is important to know the context of the research done on both sides. Chairman Hannah again thanked the ACLU for making the recommendations.

**ACTION:** Board member Archuleta stated her subcommittee would do Item C Public Interaction of the ACLU report. There was no objection from the Board members. Board member Cabou said that his subcommittee would do Item A Video/Audio Systems and Items B Searches of the ACLU report. There was no objection from the Board members. Board member Fernandez stated his subcommittee would do Item D Data Collection of the ACLU report. There was no objection from the Board members.

Board member Cabou moved that the Board approve the assignment of issues of the ACLU report just discussed to the individual subcommittees that they were suggested to be assigned. Board member Archuleta seconded. Motion carried.

## **6. Subcommittee Reports:**

### **1. Hiring, training, policy and practices**

Zoe Hammer Tomizuke – No report, the committee has not met.

## **2. Community Relations**

Board member Liz Archuleta gave her report. Ms. Archuleta would like to recommend members of her subcommittee to include: Dexter Albert, manger of a community relations firm; Dr. Jose ?? Professor at NAU; Brenda Gray, public information officer, Coconino County, and there are two other individuals. Moranda Slade and/or Crystal Warren, both members of the county African-American Advisory Council. Finally, Lucinda Andreani, Coconino County. One of the first items the subcommittee would look at would be the consent to search form and the brochure that is handed out. And, also the web page to see how accessible it is for complaints, the follow-up, etc. Any type of community outreach programs the department has, do they work with the neighborhoods, and how information is distributed to the public. Recommendations will come out of these actions. Board member Jones agrees with this.

Chairman Hannah stated that all subcommittees must be posted through Ms. Vasquez's office.

## **3. Internal Review, including adherence to the lawsuit stipulation**

Tom Milldebrandt – subcommittee has not met yet. Board Member Luis Fernandez would like to have Robert Huddleston, Chief of Police, Casa Grande and Jason Martinez, Professor at Estrella Mountain Community College, and Chairman of the Arizona Civil Rights Board as members of his subcommittee.

## **4. Best Practices**

Board member Cabou gave a report.

**7. Board Forum:** Chairman Hannah stated per the Executive Order and the policy advisor, Susie Barr, Department of Public Safety employees couldn't be a member of a subcommittee. They can only be part of the subcommittee on an advisory basis.

The Chairman also stated that we might be able to get a legal intern from one of the universities to help with the data collection work for the subcommittees. Ms. Vasquez stated the intern could do a lot of the background work for the Board and they would be assigned to her office. They could put the documents together if that would be okay with the Board. Board member Cabou works for ASU legal department and volunteered to check with his department for an intern. The intern would be unpaid as there are no funds from the state.

Ms. Dora Vasquez said that Chairman Hannah would have a birthday, Saturday, April 19; he will be 70 years old and wished him "Happy Birthday." The rest of the Board did the same.

Chairman Hannah said there should be subcommittee meetings before the next full Board meeting. Board member Luis Fernandez would not be available for any



subcommittee meeting from May 22 until June 10. Chairman Hannah reminded the subcommittees to be sure to send the agendas to Dora for posting, as they are public meetings.

**8. Next Meeting Date:** Thursday, June 19, 2008, at 1:00 p.m., 1700 W. Washington Street, 6B Conference Room, Phoenix, Arizona.

**9. Call To Adjourn:** Meeting adjourned at 4:20 p.m.

**ACTION:** Board member Archuleta moved to adjourn; Board member Milldebrandt seconded; motion passed unanimously.

*Meeting minutes transcribed by:  
Ms. Laretta Ayres  
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